

U.S. Department of Labor

Office of Administrative Law Judges  
525 Vine Street - Suite 900  
Cincinnati, Ohio 45202

(513) 684-3252  
(513) 684-6108 (FAX)



**Issue date: 27Dec2001**

Case No: 2000-BLA-0776

In the Matter of

JACK WEBB NEWSOME,  
Claimant

v.

COSTAIN COAL, INC.,  
Employer,

UNDERWRITERS SAFETY AND CLAIMS,  
Carrier,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,  
Party-in-Interest.

APPEARANCES:

Jack Webb Newsome  
Pro se

Stanley S. Dawson, Esquire  
For the employer/carrier

BEFORE: JOSEPH E. KANE  
Administrative Law Judge

DECISION AND ORDER — DENYING BENEFITS

This proceeding arises from a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. § 901 *et seq.* (the Act). Benefits are

awarded to coal miners who are totally disabled due to pneumoconiosis. Surviving dependents of coal miners whose deaths were caused by pneumoconiosis may also recover benefits. Pneumoconiosis, commonly known as black lung, is a chronic dust disease of the lungs arising from coal mine employment. 20 C.F.R. § 718.201(a) (2001).

On May 24, 2000, this case was referred to the Office of Administrative Law Judges for a formal hearing. Following proper notice to all parties, a hearing was held on October 25, 2001 in Prestonsburg, Kentucky. The Director's exhibits were admitted into evidence pursuant to 20 C.F.R. § 725.456, and the parties had full opportunity to submit additional evidence and to present closing arguments or post-hearing briefs.

The Findings of Fact and Conclusions of Law that follow are based upon my analysis of the entire record, arguments of the parties, and the applicable regulations, statutes, and case law. They also are based upon my observation of the demeanor of the witnesses who testified at the hearing. Although perhaps not specifically mentioned in this decision, each exhibit and argument of the parties has been carefully reviewed and thoughtfully considered. While the contents of certain medical evidence may appear inconsistent with the conclusions reached herein, the appraisal of such evidence has been conducted in conformance with the quality standards of the regulations.

The Act's implementing regulations are located in Title 20 of the Code of Federal Regulations, and section numbers cited in this decision exclusively pertain to that title. References to DX, CX, and EX refer to the exhibits of the Director, claimant, and employer, respectively. The transcript of the hearing is cited as "Tr." and by page number.

### ISSUES

The following issues remain for resolution:<sup>1</sup>

1. the length of the miner's coal mine employment;
2. whether the miner has pneumoconiosis as defined by the Act and regulations;
3. whether the miner's pneumoconiosis arose out of coal mine employment;
4. whether the miner is totally disabled; and

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<sup>1</sup>At the hearing, the parties stipulated to the following issues, making their determination moot: timeliness, status as a "miner," post-1969 employment, responsible operator, last employment over one year with responsible operator, trust fund liability, res judicata and collateral estoppel.

5. whether the miner's disability is due to pneumoconiosis.

The employer also contests other issues that are identified at line 18 on the list of issues. (DX 19). These issues are beyond the authority of an administrative law judge and are preserved for appeal.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Factual Background and Procedural History

The claimant, Jack Webb Newsome, was born on May 12, 1952. Mr. Newsome married Brenda Gail Cunnins on August 20, 1998, and they reside together. On his application for benefits, claimant alleged that he has no dependent children (DX 1), but the claimant testified that he accidentally omitted his dependency information from his benefits application. He testified to having one dependent son. (Tr. 16-17).

Mr. Newsome complains of shortness of breath, a constant cough, and trouble with physical exertion. He has also experienced serious medical problems with his heart and knee. Mr. Newsome's smoking history is difficult to determine from his testimony, but it appears to have consisted of primarily cigar smoking, with some cigarette smoking, lasting at least three decades. (Tr. 41-42).

Mr. Newsome filed his application for black lung benefits on November 23, 1999. The Office of Workers' Compensation Programs denied the claim on March 6, 2000. (DX 10). Pursuant to claimant's request for a formal hearing, the case was transferred to the Office of Administrative Law Judges for a formal hearing. (DX 19).

### Coal Mine Employment

The duration of a miner's coal mine employment is relevant to the applicability of various statutory and regulatory presumptions. Claimant bears the burden of proof in establishing the length of his coal mine work. *See Shelesky v. Director, OWCP*, 7 BLR 1-34, 1-36 (1984); *Rennie v. U.S. Steel Corp.*, 1 BLR 1-859, 1-862 (1978). On his application for benefits, Mr. Newsome alleged twenty-seven years of coal mine employment. (DX 1). At the hearing, the employer stipulated to sixteen years four months of coal mine employment. (Tr. 11-12). The evidence in the record includes a Social Security Statement of Earnings encompassing the years 1969 to 1998, employment history forms, applications for benefits, and claimant's testimony. (DX 2-4, Tr. 15-53).

The Act fails to provide specific guidelines for computing the length of a miner's coal mine work. However, the Benefits Review Board consistently has held that a reasonable method of computation, supported by substantial evidence, is sufficient to sustain a finding concerning the length of coal mine employment. *See Dawson v. Old Ben Coal Co.*, 11 BLR 1-58, 1-60 (1988); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986); *Niccoli v. Director, OWCP*, 6 BLR 1-910, 1-912 (1984). Thus, a finding concerning the length of coal mine employment may be based exclusively on the miner's employment history form or testimony where it is uncontradicted and credible. *Bizzari v. Consolidation Coal Co.*, 7 BLR 1-343, 1-345 (1984); *Harkey v. Alabama By-Products Corp.*, 7 BLR 1-26, 1-28 (1984).

At the hearing, the employer stipulated to sixteen years four months of coal mine employment. (Tr. 11-12). I accept that stipulation; however, after reviewing the evidence and hearing the testimony, I find that Claimant has established more coal mine employment than presented by the employer's stipulation. Based upon my review of the record, I place the greatest weight on the Social Security records because they are documented, independent evidence of the miner's coal mine employment. Using these records, I credit Mr. Newsome with coal mine work for each quarter year in which he earned fifty dollars or more as a coal miner. *See Croucher*, 20 BLR at 1-74; *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984); 20 C.F.R. § 404.140(b). In addition, however, I found claimant to be a credible witness and rely also on his testimony to credit him with coal mine employment. In so doing, I note that Mr. Newsome testified in detail about his coal mining career, including the work he performed and the nature of his payments. Consequently, on the basis of this testimony and the documentary evidence, I find that claimant has established the following coal mine employment:

| <u>Approximate Dates<br/>of Employment</u> | <u>Employer</u>                       | <u>Sub-Total</u> | <u>Tr. Page(s)</u> |
|--|---------------------------------------|------------------|--------------------|
| April - September 1975                     | John G. Charles Engineering           | 2 quarters       | 19-20              |
| April - September 1976                     | John G. Charles Engineering           | 2 quarters       | 19-20              |
| July - September 1977                      | Unit Coal Co.                         | 1 quarter        | 20-21              |
| One month - 1978                           | Omni Coal                             | 1 quarter        | 21                 |
| Summer 1978                                | Colley & Ramsey Coal Co.              | 1 quarter        | 21                 |
| One day 1978                               | Appalachian Steel<br>Construction Co. | 1 quarter        | 22                 |

| <u>Approximate Dates<br/>of Employment</u> | <u>Employer</u>             | <u>Sub-Total</u> | <u>Tr. Page(s)</u>     |
|--|-----------------------------|------------------|------------------------|
| 1979                                       | Maple Leaf Holdings         | 4 quarters       | 23                     |
| 1980                                       | Parker Coal Co.             | 2 quarters       | 23                     |
| 1980-82                                    | Coal-Mac, Inc.              | 8 quarters       | 24                     |
| 1982-83                                    | McNally Wellman Co.         | 3 quarters       | 24                     |
| 1983-91                                    | Prater Creek Processing Co. | 35 quarters      | 25                     |
| 1992-96                                    | Lodestar Energy, Inc.       | 20 quarters      | 26                     |
|  |                             | <hr/>            |                        |
|  |                             | <u>Total:</u>    | 80 quarters (20 years) |

By testimony and supporting Social Security records, I find that Mr. Newsome has established a total of twenty (20) years of coal mine employment.

#### Medical Evidence

##### A. X-ray reports<sup>2</sup>

| <u>Exhibit</u> | <u>Date of<br/>X-ray</u> | <u>Date of<br/>Reading</u> | <u>Physician/<br/>Qualifications</u> | <u>Interpretation</u> |
|----------------|--------------------------|----------------------------|--------------------------------------|-----------------------|
| CX 1           | 1/18/96                  | 11/22/96                   | Myers                                | 1/0 pneumoconiosis    |
| CX 1           | 12/19/96                 | 12/23/96                   | Lane                                 | 1/0 pneumoconiosis    |

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<sup>2</sup> A chest x-ray may indicate the presence or absence of pneumoconiosis as well as its etiology. It is not utilized to determine whether the miner is totally disabled, unless complicated pneumoconiosis is indicated wherein the miner may be presumed to be totally disabled due to the disease.

| <u>Exhibit</u> | <u>Date of<br/>X-ray</u> | <u>Date of<br/>Reading</u> | <u>Physician/<br/>Qualifications</u> | <u>Interpretation</u> |
|----------------|--------------------------|----------------------------|--------------------------------------|-----------------------|
| DX 8           | 12/8/99                  | 12/8/99                    | Younes/B <sup>3</sup>                | Negative for CWP      |
| DX 9           | 12/8/99                  | 1/4/00                     | Sargent/B/BCR <sup>4</sup>           | Negative for CWP      |
| EX 1           | 12/8/99                  | 8/22/00                    | Westerfield/B                        | Negative for CWP      |
| EX 1           | 8/31/00                  | 8/31/00                    | Westerfield/B                        | Negative for CWP      |

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<sup>3</sup> A “B” reader is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successfully completing an examination conducted by or on behalf of the Department of Health and Human Services. *See* 42 C.F.R. § 37.51(b)(2). Interpretations by a physician who is a “B” reader and is certified by the American Board of Radiology may be given greater evidentiary weight than an interpretation by any other reader. *See Woodward v. Director, OWCP*, 991 F.2d 314, 316 n.4 (6th Cir. 1993); *Herald v. Director, OWCP*, BRB No. 94-2354 BLA (Mar. 23, 1995)(unpublished). When evaluating interpretations of miners’ chest x-rays, an administrative law judge may assign greater evidentiary weight to readings of physicians with superior qualifications. 20 C.F.R. § 718.202(a)(1); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211, 1-213 (1985). The Benefits Review Board and the United States Court of Appeals for the Sixth Circuit have approved attributing more weight to interpretations of “B” readers because of their expertise in x-ray classification. *See Warmus v. Pittsburgh & Midway Coal Mining Co.*, 839 F.2d 257, 261 n.4 (6th Cir. 1988); *Meadows v. Westmoreland Coal Co.*, 6 BLR 1-773, 1-776 (1984). The Board has held that it is also proper to credit the interpretation of a dually qualified physician over the interpretation of a B-reader. *Cranor v. Peabody Coal Co.*, 22 B.L.R. 1-1 (1999) (en banc on recon.); *Sheckler v. Clinchfield Coal Co.*, 7 B.L.R. 1-128 (1984). *See also Roberts v. Bethlehem Mines Corp.*, 8 B.L.R. 1-211 (1985) (weighing evidence under Part 718).

<sup>4</sup>Board Certified in Radiology

B. Pulmonary Function Studies<sup>5</sup>

| <u>Exhibit/<br/>Date</u> | <u>Physician</u> | <u>Age/<br/>Height</u> | <u>FEV<sub>1</sub></u> | <u>FVC</u> | <u>MVV</u> | <u>FEV<sub>1</sub><br/>/<br/>FVC</u> | <u>Tracings</u> | <u>Comments</u>                   |
|--------------------------|------------------|------------------------|------------------------|------------|------------|--------------------------------------|-----------------|-----------------------------------|
| DX 8<br>12/8/99          | Younes           | 47<br>72'              | 4.24                   | 5.29       | 112.32     | 80%                                  | Yes             | Good effort and cooperation       |
| EX 1<br>8/31/00          | Westerfield      | 48<br>72'              | 3.19                   | 4.12       | 90         | 77%                                  | Yes             | Poor effort, but good cooperation |

\*denotes testing after administration of bronchodilator

C. Arterial Blood Gas Studies<sup>6</sup>

| <u>Exhibit</u> | <u>Date</u> | <u>Physician</u> | <u>pCO<sub>2</sub></u> | <u>pO<sub>2</sub></u> | <u>Resting/<br/>Exercise</u> | <u>Comments</u> |
|----------------|-------------|------------------|------------------------|-----------------------|------------------------------|-----------------|
| DX 8           | 12/8/99     | Younes           | 40.6                   | 86.7                  | Resting                      | Normal          |
| EX 1           | 8/31/00     | Westerfield      | 40                     | 81                    | Resting                      | Normal          |

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<sup>5</sup> The pulmonary function study, also referred to as a ventilatory study or spirometry, measures obstruction in the airways of the lungs. The greater the resistance to the flow of air, the more severe any lung impairment. A pulmonary function study does not indicate the existence of pneumoconiosis; rather, it is employed to measure the level of the miner's disability. The regulations require that this study be conducted three times to assess whether the miner exerted optimal effort among trials, but the Board has held that a ventilatory study which is accompanied by only two tracings is in "substantial compliance" with the quality standards at § 718.204(c)(1). *Defore v. Alabama By-Products Corp.*, 12 B.L.R. 1-27 (1988). The values from the FEV1 as well as the MVV or FVC must be in the record, and the highest values from the trials are used to determine the level of the miner's disability.

<sup>6</sup> A blood gas study is designed to measure the ability of the lung to oxygenate blood. The initial indication of a miner's impairment will most likely manifest itself in the clogging of alveoli, as opposed to airway passages, thus rendering the blood gas study a valuable tool in the assessment of disability.

#### D. Narrative Medical Evidence

Dr. Maan Younes examined the claimant on December 8, 1999. (DX 8). He noted twenty-seven years of coal mine employment and submitted the claimant to a chest x-ray, pulmonary function study, arterial blood gas, and an electrocardiogram. He recorded that the claimant complained of shortness of breath, cough, sputum production, wheezing, chest pain, and trouble walking distances over 200 feet. The doctor concluded that the claimant did not suffer from pneumoconiosis or any other occupational lung disease. Furthermore, Dr. Younes opined that the claimant had the respiratory capacity to perform his usual or comparable coal mine work. Dr. Younes did diagnose Claimant with chronic bronchitis, coronary artery disease, and hypertension. The doctor opined that the primary etiology for the claimant's chronic bronchitis was tobacco smoking.

Dr. B. T. Westerfield examined the claimant on August 31, 2000 and examined an x-ray of the claimant dated May 31, 2000.. (EX 1). The doctor submitted the patient to an arterial blood gas and a pulmonary function test. Dr. Westerfield recorded that the claimant complained of shortness of breath, a condition the claimant alleges that he has dealt with for ten years. The doctor recorded an extensive, but non-specific, smoking history of cigars for the claimant and an alleged coal mine employment history of twenty-seven years. From his examination and the claimant's objective medical data produced from the medical tests, Dr. Westerfield concluded that the claimant does not suffer from pneumoconiosis or any other respiratory impairment. The doctor's examination yielded four impressions: 1) history of exposure to coal dust; 2) shortness of breath; 3) coronary artery disease; and 4) right knee arthritis. Dr. Westerfield did not opine as to whether the claimant could perform his normal or comparable coal mine work in his current state of health.

#### DISCUSSION AND APPLICABLE LAW

Because Mr. Newsome filed his application for benefits after March 31, 1980, this claim shall be adjudicated under the regulations at 20 C.F.R. Part 718. Under this part of the regulations, claimant must establish by a preponderance of the evidence that he has pneumoconiosis, that his pneumoconiosis arose from coal mine employment, that he is totally disabled, and that his total disability is due to pneumoconiosis. Failure to establish any of these elements precludes entitlement to benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

##### Pneumoconiosis and Causation

Under the Act, "'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." 30 U.S.C. § 902(b). Section 718.202(a) provides four methods for determining the existence of pneumoconiosis. Each shall be addressed in turn.



Under section 718.202(a)(1), a finding of pneumoconiosis may be based upon x-ray evidence. The record contains six interpretations of four chest x-rays. Of these interpretations, four were negative for pneumoconiosis while two were positive.

Because pneumoconiosis is a progressive disease, I may properly accord greater weight to the interpretations of the most recent x-rays, especially where a significant amount of time separates the newer from the older x-rays. As noted above, I also may assign heightened weight to the interpretations by physicians with superior radiological qualifications. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc).

The two positive interpretations are the oldest interpretations of record. Although the “later evidence” rule does not apply when the evidence tends to suggest an “improvement” in the miner’s condition, the probative weight I assign the interpretations is tempered by the conflicting, negative interpretations that comprise the entirety of the more contemporary evidence. *See Bailey v. U.S. Steel Mining Co.*, 21 B.L.R. 1-152 (1999)(en banc on recon.). Even disregarding any reference to the chronological relationship between the x-ray interpretations, the four negative interpretations are all offered by more highly-qualified physicians than the two positive interpretations. I assign more probative weight to the interpretations offered by better qualified physicians. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc). Thus, because the negative readings constitute the majority of interpretations and, more importantly, are verified by more, highly-qualified physicians, I find that the x-ray evidence is negative for pneumoconiosis.

Under Section 718.202(a)(2), a claimant may establish pneumoconiosis through biopsy or autopsy evidence. This section is inapplicable herein because the record contains no such evidence.

Under Section 718.202(a)(3), a claimant may prove the existence of pneumoconiosis if one of the presumptions at Sections 718.304 to 718.306 applies. Section 718.304 requires x-ray, biopsy, or equivalent evidence of complicated pneumoconiosis. Because the record contains no such evidence, this presumption is unavailable. The presumptions at Sections 718.305 and 718.306 are inapplicable because they only apply to claims that were filed before January 1, 1982, and June 30, 1982, respectively. Because none of the above presumptions applies to this claim, claimant has not established pneumoconiosis pursuant to Section 718.202(a)(3).

Section 718.202(a)(4) provides the fourth and final way for a claimant to prove that he has pneumoconiosis. Under section 718.202(a)(4), a claimant may establish the existence of the disease if a physician exercising reasoned medical judgment, notwithstanding a negative x-ray,

finds that he suffers from pneumoconiosis. Although the x-ray evidence is negative for pneumoconiosis, a physician's reasoned opinion may support the presence of the disease if it is supported by adequate rationale besides a positive x-ray interpretation. See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 (1993); *Taylor v. Director, OWCP*, 1-22, 1-24 (1986). As neither narrative medical opinion of record diagnosed pneumoconiosis, the claimant cannot establish the existence of pneumoconiosis under this section.

As the claimant has not produced evidence under any section to demonstrate the existence of pneumoconiosis, I find that the claimant does not suffer from pneumoconiosis. Thus, this claim cannot succeed. Regardless, even if the evidence had established this element, it fails to prove that claimant has a totally disabling respiratory impairment, another requisite element of entitlement.

#### Total Disability Due to Pneumoconiosis

A miner is considered totally disabled when his pulmonary or respiratory condition prevents him from performing his usual coal mine work or comparable work. 20 C.F.R. § 718.204(b)(1). Non-respiratory and non-pulmonary impairments have no bearing on a finding of total disability. See *Beatty v. Danri Corp.*, 16 BLR 1-11, 1-15 (1991). Section 718.204(b)(2) provides several criteria for establishing total disability. Under this section, I must first evaluate the evidence under each subsection and then weigh all of the probative evidence together, both like and unlike evidence, to determine whether claimant has established total respiratory disability by a preponderance of the evidence. *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1987).

Under Sections 718.204(b)(2)(i) and (b)(2)(ii), total disability may be established with qualifying pulmonary function studies or arterial blood gas studies.<sup>7</sup>

All ventilatory studies of record, both pre-bronchodilator and post-bronchodilator, must be weighed. *Strako v. Ziegler Coal Co.*, 3 B.L.R. 1-136 (1981). To be qualifying, the FEV<sub>1</sub> as well as the MVV or FVC values must equal or fall below the applicable table values. *Tischler v. Director, OWCP*, 6 B.L.R. 1-1086 (1984). I must determine the reliability of a study based upon its conformity to the applicable quality standards, *Robinette v. Director, OWCP*, 9 B.L.R. 1-154 (1986), and must consider medical opinions of record regarding reliability of a particular study. *Casella v. Kaiser Steel Corp.*, 9 B.L.R. 1-131 (1986). In assessing the reliability of a study, I may accord greater weight to the opinion of a physician who reviewed the tracings. *Street v.*

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<sup>7</sup>A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values found in Appendices B and C of Part 718. See 20 C.F.R. § 718.204(b)(2)(i) and (ii). A "non-qualifying" test produces results that exceed the table values.

*Consolidation Coal Co.*, 7 B.L.R. 1-65 (1984). Because tracings are used to determine the reliability of a ventilatory study, a study which is not accompanied by three tracings may be discredited. *Estes v. Director, OWCP*, 7 B.L.R. 1-414 (1984). If a study is accompanied by three tracings, then I may presume that the study conforms unless the party challenging conformance submits a medical opinion in support thereof. *Inman v. Peabody Coal Co.*, 6 B.L.R. 1-1249 (1984). Also, little or no weight may be accorded to a ventilatory study where the miner exhibited “poor” cooperation or comprehension. *Houchin v. Old Ben Coal Co.*, 6 B.L.R. 1-1141 (1984); *Runco v. Director, OWCP*, 6 B.L.R. 1-945 (1984); *Justice v. Jewell Ridge Coal Co.*, 3 B.L.R. 1-547 (1981).

Neither of the pulmonary function tests of record produced qualifying values.

All blood gas study evidence of record must be weighed. *Sturnick v. Consolidation Coal Co.*, 2 B.L.R. 1-972 (1980). This includes testing conducted before and after exercise. *Coen v. Director, OWCP*, 7 B.L.R. 1-30 (1984); *Lesser v. C.F. & I. Steel Corp.*, 3 B.L.R. 1-63 (1981). In order to render a blood gas study unreliable, the party must submit a medical opinion that a condition suffered by the miner, or circumstances surrounding the testing, affected the results of the study and, therefore, rendered it unreliable. *Vivian v. Director, OWCP*, 7 B.L.R. 1-360 (1984) (miner suffered from several blood diseases); *Cardwell v. Circle B Coal Co.*, 6 B.L.R. 1-788 (1984) (miner was intoxicated). Similarly, in *Big Horn Coal Co. v. Director, OWCP [Alley]*, 897 F.2d 1045 (10th Cir. 1990) and *Twin Pines Coal Co. v. U.S. DOL*, 854 F.2d 1212 (10th Cir. 1988), the court held that the administrative law judge must consider a physician's report which addresses the reliability and probative value of testing wherein he or she attributes qualifying results to nonrespiratory factors such as age, altitude, or obesity.

None of the arterial blood gases of record produced qualifying values.

Section 718.204(b)(2)(iii) provides that a claimant may prove total disability through evidence establishing cor pulmonale with right-sided congestive heart failure. This section is inapplicable to this claim because the record contains no such evidence.

Where a claimant cannot establish total disability under subparagraphs (b)(2)(i), (ii), or (iii), Section 718.204(b)(2)(iv) provides another means to prove total disability. Under this section, total disability may be established if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a respiratory or pulmonary impairment prevents the miner from engaging in his usual coal mine work or comparable and gainful work.

The weight given to each medical opinion will be in proportion to its documented and well-reasoned conclusions. A “documented” opinion is one that sets forth the clinical findings,

observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A report may be adequately documented if it is based on items such as a physical examination, symptoms and patient's history. *See Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985). A "reasoned" opinion is one in which the underlying documentation and data are adequate to support the physician's conclusions. *See Fields, supra*. The determination that a medical opinion is "reasoned" and "documented" is for this Court to determine. *See Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc).

Neither of the medical opinions of record opined that the claimant was totally disabled. Dr. Younes specifically concluded that Claimant was physically able to perform his usual or comparable coal mine work. Dr. Westerfield, while not specifically commenting on the claimant's ability to perform his usual or comparable coal mine work, did opine that the claimant suffered from no respiratory impairment. As the applicable regulations define total disability as "respiratory" or "pulmonary," Dr. Westerfield's finding of no respiratory impairment is the functional equivalent of no total disability for the claimant. *See* 20 C.F.R. § 718.204(a), (b)(1). Accordingly, I find neither medical opinion is probative evidence of total disability.

Examining the arterial blood gases, pulmonary function tests, and medical opinions as a whole, I find that the claimant is not totally disabled.

### Conclusion

The evidence does not establish the existence of pneumoconiosis or a totally disabling respiratory impairment. Accordingly, the claim of Jack Webb Newsome must be denied.

### Attorney's Fee

The award of an attorney's fee is permitted only in cases in which the claimant is found to be entitled to benefits. Because benefits are not awarded in this case, the Act prohibits the charging of any fee to claimant for legal services rendered in pursuit of the claim.

ORDER

The claim of Jack Webb Newsome for benefits under the Act is denied.

A  
JOSEPH E. KANE  
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty days from the date of this decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington D.C. 20013-7601. This decision shall be final thirty days after the filing of this decision with the district director unless appeal proceedings are instituted. 20 C.F.R. § 725.479. A copy of this Notice of Appeal must also be served on Donald S. Shire, Associate Solicitor for Black Lung Benefits, 200 Constitution Avenue, N.W., Room N-2605, Washington, D.C. 20210.